

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

MARTIN H. POEL,

Plaintiff,

v.

No. CIV 11-0882 JB/GBW

WILLIAM WEBBER, STEVEN  
VOGEL, and ROBERT ROBLES,

Defendants.

**MEMORANDUM OPINION AND ORDER DENYING RELIEF AS MOOT**

**THIS MATTER** comes before the Court on Plaintiff's Motion for Relief from Memorandum Opinion and Order Pursuant to Fed. R. Civ. P. 60(b)(1) and Motion to Alter Judgment Pursuant to Fed. R. Civ. P. 59(e), filed July 10, 2012 (Doc. 55)("Motion for Relief"). Plaintiff Martin H. Poel asks that the Court amend its order dismissing the "official capacity" claims against Judge Robles from "with prejudice" to "without prejudice." Motion for Relief at 1-2. Because the Court has done what Dr. Poel asks, the Court will deny his Motion for Relief as moot.

**PROCEDURAL BACKGROUND**

Dr. Poel filed suit against Defendants William Webber, Steven Vogel, and the Honorable Robert Robles, in his official capacity as District Judge of the Third Judicial District Court of the State of New Mexico. See Complaint for Violations of Amendments I, IV, V, VIII, and XIV of The United States Constitution, Art. II §§ 4, 10, and 18 of the New Mexico Constitution, and Miscellaneous State Torts, filed October 1, 2011 (Doc. 1)("Complaint"). Dr. Poel alleges that the three Defendants conspired to deprive him of his constitutional rights in a case he filed against Mr. Vogel and Mr. Webber that was heard in Judge Robles' court. See Complaint

12-80, at 3-14. Each Defendant moved to dismiss the case. See Judge Robert Robles' First Motion to Dismiss and Memorandum in Support Thereof, filed October 26, 2011 (Doc. 7); Mr. Vogel's Motion and Memorandum to Dismiss, filed November 1, 2011 (Doc. 16); Defendant William Webber's Motion to Dismiss, filed November 10, 2011 (Doc. 25).

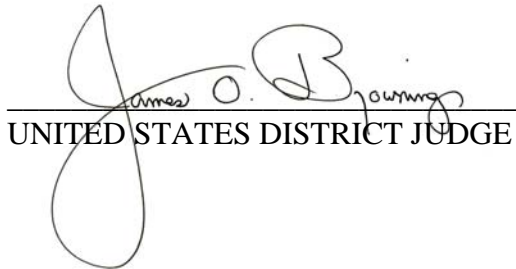
Judge Robles timely raised a defense of Eleventh Amendment immunity to the claims against him in his official capacity. See Judge Robert Robles' First Motion to Dismiss and Memorandum in Support Thereof at 9-10. On May 4, 2012, the Honorable Gregory B. Wormuth, United States Magistrate Judge, recommended that the Court dismiss Dr. Poel's claims against Judge Robles in his official capacity without prejudice on the basis that this Court lacked subject matter jurisdiction. See Proposed Findings and Recommended Disposition (Doc. 48)("PFR&D") at 3-7. Judge Wormuth further recommended that this Court dismiss with prejudice any claims that Dr. Poel may have intended to assert against Judge Robles in his individual capacity, pursuant to Judge Robles' judicial immunity. See PFR&D at 6. Dr. Poel filed no objections to these recommendations. See Plaintiff Poel's Concurrence in Recommended Disposition, filed May 8, 2012 (Doc. 49).

On July 2, 2012, "[g]iven the lack of objection and the Court's concurrence with the analysis in the PFRD, the Court determine[d] that Judge Wormuth's findings and disposition should be adopted." See Memorandum Opinion and Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition, filed July 2, 2012 (Doc. 52) at 3. The Court then decreed that "IT IS ORDERED that: (i) the Magistrate Judge's Proposed Findings and Recommended Disposition, filed May 4, 2012 (Doc. 48), is adopted; (ii) Defendant Judge Robert Robles' First Motion to Dismiss and Memorandum in Support Thereof, filed October 26, 2011

(Doc. 7), is granted....” Memorandum Opinion and Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition at 3.

The Court's Order did not state that the “official capacity” claims against Judge Robles were being dismissed with prejudice. The Order, by explicitly adopting Judge Wormuth's recommendations, dismissed the claims against Judge Robles in his official capacity without prejudice. Only to the extent that Dr. Poel made any claims against Judge Robles in his individual capacity did the Court dismiss such claims with prejudice. See PFR&D at 7. As Dr. Poel's motion for relief is apparently based upon a misunderstanding of the Court's order, the Court will deny as moot.

**IT IS ORDERED** that the Plaintiff's Motion for Relief from Memorandum Opinion and Order Pursuant to Fed. R. Civ. P. 60(b)(1) and Motion to Alter Judgment Pursuant to Fed. R. Civ. P. 59(e) is denied as moot.



UNITED STATES DISTRICT JUDGE

*Parties and counsel:*

Martin H. Poel  
Las Cruces, New Mexico

*Plaintiff pro se*

Gerald G. Dixon  
Spring V. Schofield  
Dixon, Scholl & Bailey, P.A.  
Albuquerque, New Mexico

*Attorneys for Defendant William  
Webber*

Briggs F. Cheney  
Sheehan Sheehan & Stelzner  
Albuquerque, New Mexico

*Attorney for Defendant Steven  
Vogel*

Mark D. Jarmie  
Jarmie & Associates  
Albuquerque, New Mexico

*Attorneys for Defendant The  
Honorable Robert Robles*